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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,736	10/30/2003	Patrick R. Lancaster III	02906.0357	6347

22852 7590 09/20/2006

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER
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TRAN, KHOI H

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/696,736

Applicant(s)

LANCASTER ET AL.

Examiner

Khoi H. Tran

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-173 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-173 are subject to restriction and/or election requirement.

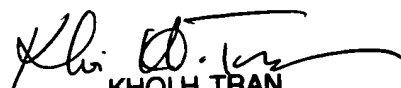
## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
KHÔI H. TRAN  
PRIMARY EXAMINER

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 2-9, 15, 20, 21-23, 25-32, 38, 43-47, 49-58, 62, 65, 66, 68-79, 83, 86, 172, and 173 are, drawn to method of building a load and positioning the sensors, classified in class 700, subclass 217.
  - II. Claims 10-13, 16-19, 33-36, 39-42, 59, 60, 63, 64, 80, 81, 84, and 85, drawn to method of building a load and monitoring the product holder, classified in class 700, subclass 245.
  - III. Claims 14, 37, 61, and 82, drawn to method of building a load and controlling the speed of the transporting products, classified in class 700, subclass 228.
  - IV. Claims 162-171, drawn to method of building and wrapping a load , classified in class 53, subclass 396, or 399.
  - V. Claims 88-96, 102, 107-112, 114-119, 125, 130-134, 136-141, 145, and 148-150, drawn to a palletizer with the particulars of the control and sensing systems, classified in class 700, subclass 213, or class 414, subclass 788.1.
  - VI. Claims 97-100, 103-106, 120-123, 126-129, 142, 143, 146, and 147 drawn to a palletizer with the particulars of product holder arrangement, classified in class 414, subclass 792.9.

- VII. Claims 101, 124, and 144, drawn to a palletizer with the particulars of controlling the speed of the transporting means classified in class 414, subclass 791.6.
- VIII. Claims 151-161, drawn to a system for building and wrapping a load, classified in class 53, subclass 52.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I, II, III, IV and V, VI, VII, VIII are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed could be practice by another materially different palletizing system. For example, a system having different type of gripping mechanism and different type of sensing network.

3. Claims 1, 24, 48, and 67 link(s) inventions I, II, and III. Claims 87, 113, and 135 link(s) inventions V, VI, and VII. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s), claims 1, 24, 48, 67, 87, 113, and 135. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104. **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance,

whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. Inventions I and II, I and III, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as for use in a load building system without gripping means. In the instant case, subcombination II has separate utility such as for use in a load building system having different type of sensing network and different logic sequence. In the instant case, subcombination III has separate utility such as for use in a load building system with different type of gripping mechanism See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a

continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

5. Inventions V and VI, V and VII, VI and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination V has separate utility such as for use in a load building system without gripping means. In the instant case, subcombination VI has separate utility such as for use in a load building system having different type of sensing network and different logic sequence. In the instant case, subcombination VII has separate utility such as for use in a load building system with different type of gripping mechanism See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

6. Inventions IV and I, II, III, VIII and V, VI, VII are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because at least the subcombination of logic sequence within the combination is not required for patentability of the combination. The subcombination has separate utility such as for use in a load building method and system without the dispensing of the packaging system.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

7. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

8. This application contains claims directed to the following patentably distinct species:

**Species I**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for each transporting cycles of the load; means for transporting the product comprises a product row transporting system;

**Species II**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for each transporting cycles of the load; means for transporting the product comprises a product layer transporting system;

**Species III**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for each transporting cycles of the load; means for transporting the product comprises a single product unit transporting system;

**Species IV**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for at least two transporting cycles of the load; means for transporting the product comprises a product row transporting system;

**Species V**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for at least two transporting cycles of the load; means for transporting the product comprises a product layer transporting system;

**Species VI**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for at least two transporting cycles of the load; means for transporting the product comprises a single product unit transporting system;



**Species VII**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for at least two transporting cycles of the load and executing a second logic sequence for a different transporting cycle while building the load; means for transporting the product comprises a product row transporting system;

**Species VIII**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for at least two transporting cycles of the load and executing a second logic sequence for a different transporting cycle while building the load; means for transporting the product comprises a product layer transporting system;

**Species IX**, the embodiment wherein the building of the load is based on a desired volume; executing a logic sequence for at least two transporting cycles of the load and executing a second logic sequence for a different transporting cycle while building the load; means for transporting the product comprises a single product unit transporting system;

**Species X**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for each transporting cycles of the load; means for transporting the product comprises a product row transporting system;

**Species XI**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for each transporting cycles of the load; means for transporting the product comprises a product layer transporting system;

**Species XII**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for each transporting cycles of the load; means for transporting the product comprises a single product unit transporting system;

**Species XIII**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for at least two transporting cycles of the load; means for transporting the product comprises a product row transporting system;

**Species XIV**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for at least two transporting cycles of the load; means for transporting the product comprises a product layer transporting system;

**Species XV**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for at least two transporting cycles of the load; means for transporting the product comprises a single product unit transporting system;

**Species XVI**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for at least two transporting cycles of the load and executing a second logic sequence for a different transporting cycle while building the load; means for transporting the product comprises a product row transporting system;

**Species XVII**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for at least two transporting cycles of the load and executing a second logic sequence for a different transporting cycle while building the load; means for transporting the product comprises a product layer transporting system;

**Species XVIII**, the embodiment wherein the building of the load is based on a desired area; executing a logic sequence for at least two transporting cycles of the load and executing a second logic sequence for a different transporting cycle while building the load; means for transporting the product comprises a single product unit transporting system;

The species are independent or distinct because they are mutually exclusive as disclosed in the specification.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims appears to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.  
MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

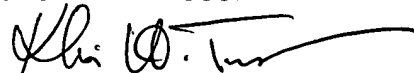
Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoi H Tran  
Primary Examiner  
Art Unit 3651

KHT  
09/14/2006